

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JANETTE N. VAN GORP**

Claimant

VS.

**FORDYCE CONCRETE CO., INC.**

Respondent

Self-Insured

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Docket No. 220,401

**ORDER**

Claimant requested review of the Preliminary Decision dated May 7, 1997, entered by Administrative Law Judge Robert H. Foerschler.

**ISSUES**

The Administrative Law Judge denied claimant's request for additional medical treatment. The issue before the Appeals Board on this review is whether claimant's present need for medical treatment is the result of a work-related accident which claimant sustained on March 20, 1996.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After considering the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The Preliminary Decision should be affirmed.

The issue before the Appeals Board is whether claimant injured her back as a result of her falling from a concrete truck on March 20, 1996. Respondent admits claimant injured her right arm in that work-related accident but deny she injured her back.

K.S.A. 1996 Supp. 44-534a grants review of preliminary hearing issues to the following: (1) whether the worker sustained an accidental injury; (2) whether the injury arose out of and in the course of employment; (3) whether notice and claim were timely provided; and (4) whether certain defenses apply. Also, the Appeals Board may review other preliminary hearing issues when an administrative law judge has exceeded his or her jurisdiction or authority. See K.S.A. 1996 Supp. 44-551.

On previous occasions the Appeals Board has ruled the issue now before us is conceptually equivalent to the issue of whether claimant has sustained accidental injury arising out of and in the course of employment and, therefore, the Appeals Board has jurisdiction to review the Administrative Law Judge's preliminary hearing finding on that question.

On March 20, 1996, claimant fell approximately 12 feet to the ground from the concrete truck which she was washing. Claimant landed in the fetal position on her right side and fractured her right wrist and elbow. The fall also caused a large bruise on claimant's right hip and buttocks.

The respondent selected Dr. James Reardon to treat claimant, which he did through June 22, 1996. In April 1996, claimant returned to work for respondent driving a mail car for three or four hours per day. After the doctor released claimant to return to work without restrictions on June 22, 1996, claimant returned to work for the respondent and her regular job duties as a concrete truck driver.

Approximately two weeks after returning to her regular job duties, claimant first began to experience symptoms in her left hip and leg. Other than the bruise on her buttocks, claimant did not have any low back or leg symptoms during the months of March, April, May, and June 1996. Claimant testified that once the low back and lower extremity symptoms began they progressively worsened and she requested a transfer to a dump truck. She also testified her symptoms progressively worsened to the point she was unable to climb, stand, or walk.

In August 1996, claimant sought medical treatment on her own at North Kansas City Hospital with low back, left hip, left leg and foot complaints. The hospital ordered an MRI of the lumbar spine and referred claimant to Arthur Jenny, M.D., who treated claimant with epidural steroid injections. Claimant saw Dr. Jenny on two occasions, the last being in September 1996. Claimant testified that Dr. Jenny recommended back surgery and that he did not believe claimant's back complaints were related to the March 1996 accident.

At claimant's attorney's request, board-certified orthopedic surgeon Ronald Zipper, D.O., examined and evaluated claimant in December 1996. He diagnosed "L5-S1 radiculopathy of the left lower extremity, consistent with a herniated disc at L4-5 or above" and "symptomatic spondylolisthesis and facet hypertrophy." Dr. Zipper attributes claimant's present symptomatology to the March 20, 1996, fall. In his initial letter to

claimant's attorney, the doctor noted it was not unusual to see discogenic problems develop over a period of time.

Respondent introduced medical notes from Arthur B. Jenny, M.D. The notes dated August 9, 1996, contain the history that claimant's low back, hip, and leg pain began around August 1, 1996, while she was cooking dinner and that her full radiculopathy developed over the next three or four days. Claimant denies she gave that history and believes the person who recorded it was confused.

After considering the record assembled to date, the Appeals Board agrees with the Administrative Law Judge's conclusion that claimant has failed to prove her back complaints are related to the March 20, 1996, work-related accident. The Appeals Board finds the complete absence of low back and leg symptoms until sometime in July 1996, as claimant now alleges, is very significant and has not been adequately explained if, indeed, the symptoms are related to the fall at work.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision dated May 7, 1997, entered by Administrative Law Judge Robert H. Foerschler should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1997.

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BOARD MEMBER

c: Davy C. Walker, Kansas City, KS  
Frederick J. Greenbaum, Kansas City, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director